

(2) Enrollment is canceled and the individual has not negotiated an educational benefits check for any part of the certified period of enrollment.

(3) The individual:

(i) Interrupts his or her enrollment at the scheduled end of any term, quarter, semester or school year within the certified period of enrollment; and

(ii) Has not negotiated any check for educational benefits for the succeeding term, quarter, semester or school year.

(4) The individual requests interruption or cancellation for any break when a school was closed during a certified period of enrollment and payments were continued under an established policy based upon an Executive order of the President or due to an emergency situation. This exception applies whether or not the individual has negotiated a check for educational benefits for the certified period.

(Authority: 38 U.S.C. 3241, 3680)

#### COUNSELING

#### §21.5100 Counseling.

(a) *Purpose.* The purpose of counseling is:

(1) To assist in selecting an objective;

(2) To develop a suitable program of education or training; and

(3) To resolve any personal problems which are likely to interfere with the successful pursuit of a program.

(b) *Availability of counseling.* Counseling assistance is available for—

(1) Identifying and removing reasons for academic difficulties which may result in interruption or discontinuance of training, or

(2) In considering changes in career plans, and making sound decisions about the changes.

(Authority: 38 U.S.C. 3697A(a))

(c) *Optional counseling.* VA shall provide counseling as needed for the purposes identified in paragraphs (a) and (b) of this section upon request of the individual. VA shall take appropriate steps (including individual notification where feasible) to acquaint all participants with the availability and advantages of counseling services.

(Authority: 38 U.S.C. 3241, 3697A(a) and (b))

(d) *Required counseling.* (1) In any case in which VA has rated the veteran as being incompetent, VA must provide counseling as described in 38 U.S.C. 3697A prior to selection of a program of education or training. The counseling will follow the veteran's initial application for benefits or any communication from the veteran or guardian indicating that the veteran wishes to change his or her program. This requirement that counseling be provided is met when—

(i) The veteran has had one or more personal interviews with the counselor;

(ii) The counselor has jointly developed with the veteran recommendations for selecting a program;

(iii) These recommendations have been reviewed with the veteran.

(2) The veteran may follow the recommendations developed in the course of counseling, but is not required to do so.

(3) VA will take no further action on a veteran's application for assistance under 38 U.S.C. chapter 32 unless he or she—

(i) Reports for counseling;

(ii) Cooperates in the counseling process; and

(iii) Completes counseling to the extent required under paragraph (d)(1) of this section.

(Authority: 38 U.S.C. 3241, 3697A(c))

[45 FR 31, Jan. 2, 1980, as amended at 47 FR 51746, Nov. 17, 1982; 53 FR 34497, Sept. 7, 1988; 58 FR 31911, June 7, 1993; 61 FR 29030, June 7, 1996; 61 FR 36629, July 12, 1996]

#### §21.5103 Travel expenses.

(a) *General.* VA shall determine and pay the necessary expense of travel to and from the place of counseling for a veteran who is required to receive counseling as provided under 38 U.S.C. 111 (a), (d), (e), and (g).

(Authority: 38 U.S.C. 111(a), (d), (e), and (g))

(b) *Restriction.* VA will not pay the necessary cost of travel to and from the place of counseling when counseling is not required, but is provided as a result of a voluntary request by the veteran.

(Authority: 38 U.S.C. 111)

[61 FR 29030, June 7, 1996]

## § 21.5130

PAYMENTS; EDUCATIONAL ASSISTANCE  
ALLOWANCE

### § 21.5130 Payments; educational assistance allowance.

VA will apply the following sections in administering benefits payable under 38 U.S.C. Chapter 32:

(a) Section 21.4131—Commencing dates (except paragraph (d)).

(b) Section 21.4135—Discontinuance dates.

(c) Section 21.4138 (except paragraph (b))—Certifications and release of payments.

(d) Section 21.4146—Assignments of benefits prohibited.

(Authority: 38 U.S.C. 3241(a))

(e) Section 21.4136(k) (except paragraph (k)(3))—Mitigating circumstances.

(Authority: 38 U.S.C. 3241(a), 3680(a))

[45 FR 31, Jan. 2, 1980, as amended at 46 FR 32024, June 19, 1981; 53 FR 617, Jan. 11, 1988; 55 FR 31582, Aug. 3, 1990; 57 FR 38612, Aug. 26, 1992; 61 FR 29030, June 7, 1996; 63 FR 35836, July 1, 1998; 64 FR 23772, May 4, 1999; 65 FR 5786, Feb. 7, 2000]

### § 21.5131 Educational assistance allowance.

VA will pay educational assistance allowance at the rate specified in §§ 21.5136 and 21.5138 of this part while the individual is pursuing either an approved program of education or a refresher or deficiency course or other preparatory or special education or training course which is necessary to enable the individual to pursue an approved program of education. VA will make no payment for pursuit of any course which either is not part of the veteran's program of education, or is not a refresher, deficiency or other preparatory or special education or training course which is necessary to enable the individual to pursue an approved program of education. VA may withhold a payment until it receives verification or certification of the individual's continued enrollment and ad-

## 38 CFR Ch. I (7–1–04 Edition)

justs the individual's account. See § 21.5133.

(Authority: 38 U.S.C. 3241; Pub. L. 94–592, Pub. L. 99–576, Pub. L. 101–237)

[57 FR 38612, Aug. 26, 1992]

### § 21.5132 Criteria used in determining benefit payments.

(a) *Training time.* The amount of benefit payment to an individual in all types of training except cooperative training, correspondence training and apprenticeship and other on-job training depends on whether VA determines that the individual is a full-time student, three-quarter-time student, half-time student or one-quarter-time student.

(Authority: 38 U.S.C. 3241, 3688; Pub. L. 99–576, Pub. L. 100–689)

(b) *Contributions.* The amount of benefit payment to an individual also depends on:

(1) The amount the individual has contributed to the fund.

(2) The amount the Secretary of Defense has contributed to the fund for the individual.

(Authority: 38 U.S.C. 3231)

[45 FR 31, Jan. 2, 1980, as amended at 47 FR 51746, Nov. 17, 1982; 48 FR 3369, Jan. 25, 1983; 52 FR 3429, Feb. 4, 1987; 53 FR 34498, Sept. 7, 1988; 55 FR 31582, Aug. 3, 1990; 61 FR 29030, June 7, 1996]

### § 21.5133 Certifications and release of payments.

An individual must be pursuing a program of education in order to receive payments. To ensure that this is the case, the provisions of this paragraph must be met.

(a) *General.* VA will pay educational assistance to a veteran or servicemember (other than one who qualifies for an advance payment, or one pursuing a program of apprenticeship, other on-job training, or a correspondence course) only after—

(1) The educational institution has certified his or her enrollment as provided in § 21.5200(d) of this part; and

(2) VA has received from the individual a verification of the enrollment.